IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2106 & 2107 of 2001

with

CIVIL APPLICATION NO.5036 & 5038 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATIONAL INSURANCE CO LTD.

Versus

SALAMSINH KHUMASINH SOLANKI (KOLI)

Appearance:

MR SUNIL B PARIKH for Appellant

MR MTM HAKIM for Respondents-original claimants

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 13/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. MTM Hakim waives service of notice in appeal on behalf of respondents-original claimants.

2. On a joint request of learned counsel, these appeals are taken up for hearing today.

3. As a result of the hearing and discussion, it becomes apparent, particularly from the grounds taken in the appeals as also from the averments made in C.A. Nos.5036/01 and 5038/2001 (for additional evidence), that the owner and driver, have not supported the contentions raised by the appellant Insurance Company. On the contrary they appear to have supported the original claimants, at least in the context of the core of the dispute, as to whether the vehicle in question was involved in the accident at all.

4. From the averments made in C.A. No.5301/2001, it would appear that there is a possibility of serious fraud having been played upon the Insurance Company. At this juncture we are not inclined to investigate the factual averments made in the said Civil Application.

5. Even if these appeals were kept pending for final hearing until it could be taken up for such final hearing, the interest of both sides would suffer and there would be considerable delay. On the other hand, the main averment in the appeals is that there is a distinct possibility of a serious fraud having been perpetrated upon the Insurance Company. This possibility can only be investigated effectively by the Tribunal, where there is full scope for both the sides to adduce appropriate evidence in support of their respective contentions.

6. Learned counsel for the respondents-original claimants sought to rely upon the observations of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh, reported at AIR 2000 SC 1165, and particularly paragraph 14 thereof.

7. In view of this decision, learned counsel for the original claimants submitted that it would be more appropriate for the Insurance Company to prefer a review application before the Tribunal.

8. It should be noted that the decision and the observations made in the aforesaid decision by the Supreme Court only lay down that the Tribunal is not without powers of review, and review application in respect of the award passed by the Tribunal would be open, particularly where the period of limitation for filing an appeal has expired. On the facts of the case, when seen in the context of the aforesaid decision, we are of the opinion that the said decision does not lay down any principle to the effect that under such circumstances the appeal itself would be incompetent. On the other hand, on the facts of the case, it is the review application which would be barred by time. Even if the review application were preferred at this stage, the appellant Insurance Company would necessarily have to apply for condonation of delay and would thus subject itself to the discretionary jurisdiction of the Tribunal. On the facts of the case, we are of the opinion that such a course, if thrust upon the appellant Insurance Company, would not be reasonable, and in any case is not necessary.

9. In the premises aforesaid, the impugned judgement and award are quashed and set aside. The case is remanded back to the Tribunal for a fresh decision on merits. It is clarified that it shall be open to all the parties to amend their pleadings in case they consider it necessary, and also to lead additional evidence if necessary. These appeals are accordingly disposed of with no order as to costs.

10. Civil Application Nos.5036/2001 and 5038/2001 have been filed by the appellant in the appeal for producing additional evidence on the record of the appeal. In view of the fact that by the present judgement and order we have remanded the matters back to the Tribunal for a fresh decision on merits, these applications do not require to be considered on merits. The same are accordingly disposed of with no order as to costs.

11. The Tribunal shall give appropriate priority to the aforesaid matters in view of the fact that the same are considerably old.

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